

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

v.

19-CR-103-JLS

SHANE GUAY,

Defendant.

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**GOVERNMENT'S SUPPLEMENTAL RESPONSE  
TO DEFENDANT'S OMNIBUS MOTIONS**

THE UNITED STATES OF AMERICA, by and through its attorney, James P. Kennedy, Jr., Acting United States Attorney for the Western District of New York, Meghan A. Tokash, Assistant United States Attorney, of counsel, hereby files a supplemental government response to the defendant's pretrial omnibus motions (Dkt. 31).

**SUPPLEMENTAL INFORMATION**

The government would like to bring the following timeline of events regarding the investigation to the Court's attention for consideration before deciding the defense motion to suppress evidence derived from the search warrant:

November 5-8, 2016 Ayer and Shirley Police Departments in Massachusetts receive complaints from minor victims and recover Instagram chats of enticement as well as Image 1 (a picture of the defendant's penis) to minors

November 10, 2016 Preservation order sent to Instagram

November 22, 2016	Massachusetts serves a search warrant on Instagram for account data
January 6, 2017	Massachusetts investigators ask to schedule a meeting with the Assistant District Attorney (ADA); the ADA sets the meeting for March 8, 2017 and approves an arrest warrant for the defendant at the March 8, 2017 meeting
March 13, 2017	ADA tells investigators that her supervisors decline prosecution and the case was sent to Massachusetts ICAC to forward to New York ICAC
May 1, 2017	New York State Police receive the case; the New York State Police search warrant application (page 9) has Investigator Lombardi confirm an identical match of the defendant to the Instagram search warrant images (not just the chest as alleged on page 4 of the defense motion). Investigator Lombardi also identified the room likeness to that of the room in Image 1.
May 2, 2017	New York State Police conduct DMV searches tying the defendant to 147 North 9 <sup>th</sup> Street in Olean, New York
August 14, 2017	New York State Police requests a subpoena for IP addresses for the defendant's Instagram accounts in the Massachusetts search warrant
August 22, 2017	Grand Jury subpoena sent to Verizon
September 5, 2017	Verizon provides data; a sample of eight IPs all got to phone number 716-307-1305 (Carol Lata, 150 North 8 <sup>th</sup> Street, Olean, New York; a sample of 25 Instagram logins also are linked to the same account
September 28, 2017	New York State Police identify the defendant as the potential grandchild of Carol Lata via public-facing Facebook account; New York State Police then searched Facebook for 716-307-1305 and discover the phone is tied to the Facebook account of the defendant
October 23, 2017	New subpoena is issued for Verizon for 716-307-1305; Verizon responds November 14, 2017 with the same account information
March 29, 2018	New York State Police Investigator Lombardi searches Facebook to ensure 716-307-1305 is still associated with the defendant

April 6, 2018	Investigator Lombardi searches the defendant's Facebook again and see a photograph on his page dated March 24, 2018 that matched the room in the November 2016 Instagram photos; Lombardi confirms the defendant is still at 147 North 8 <sup>th</sup> Street based on DMV records and police reports; Lombardi forwards the information to New York State Police (Walsh) in Olean
April 18, 2018	Homeland Security Investigations (HSI) receives a lead from Harris County Georgia and speaks with Investigator
April 18, 2018	HSI enters the defendant's information into New York Law Enforcement deconfliction system
April 23, 2018	HSI conducts a forensic interview of a minor victim in Atlanta with Harris County
May 31, 2018	Search Warrant obtained for defendant's home
June 4, 2018	While on military duty, HSI lead case agent receives a conflict notice for the defendant's case from the deconfliction system; this is the first time HSI learned of the New York State police case (5 days after the search warrant was obtained)
June 5, 2018	Search Warrant executed on defendant's home

Additionally, the government would like to bring the following facts to the Court's attention with respect to evidence found on the defendant's cell phone to indicate the defendant continued to collect child pornography *after* November 2016:

1. Cookies and browsing history consistent with child pornography sites from 2018;
2. Numerous child exploitation files and child pornography files dated 2017; and
3. Based on the Facebook search warrant return, the defendant's accounts were still active and the chats between V1 and V2 were not deleted despite what the defendant told Harris County investigators.

**CONCLUSION**

For all of the foregoing reasons, the defendant's motions should be denied in their entirety.

DATED: Buffalo, New York, February 11, 2020.

JAMES P. KENNEDY, JR.  
United States Attorney

BY: s/ MEGHAN A. TOKASH  
Assistant United States Attorney  
United States Attorney's Office  
Western District of New York  
138 Delaware Avenue  
Buffalo, New York 14202  
716/843-5860  
Meghan.Tokash@usdoj.gov